



C.M.S.A.No.38 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	26.09.2024
PRONOUNCED ON	:	20.11.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.S.A.No.38 of 2021

and C.M.P.Nos.7284 & 4209 of 2021 & 15035 of 2022

M/s.KSM Nirman Private Limited,
Presently known as M/s.Olympia
Tech Park (Chennai) Private Limited,
No.1, SIDCO Industrial Estate,
Guindy, Chennai 600 032

... Appellant

Vs.

Olympia Grande Apartments
Owner's Welfare Association,
Pallavaram Registration No.569/2016,
No.328, GST Road, Pallavaram,
Chennai 600 043

... Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 100 of C.P.C. to set aside the order dated 09.11.2020 passed in Appeal No.75 of 2019 on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and confirm the order dated 06.11.2019 passed in C.No.327 of 2019 on the file of Tamil Nadu Real Estate Regulatory Authority, Chennai.



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For Appellant : Mr.Isacc Mohanlal, Senior Counsel
For Mrs.M.V.V.N.Sivanthy

For Respondent : Mr.S.R.Rajagopal, Senior Counsel
For Mr.Hari Radhakrishnan

J U D G M E N T

(Judgment of the Court was made by **J. NISHA BANU, J.**)

Challenging the order passed by the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) in Appeal No.75 of 2019, dated 09.11.2020, the aggrieved respondent therein/Developer, has preferred the present Civil Miscellaneous Second Appeal. The Tamil Nadu Real Estate Appellate Tribunal, set aside the order in C.No.327/2019 dated 6.11.2019 and directed the Regulatory Authority to dispose the complaint on merits.

2. The necessary facts leading to the filing of this appeal would run

thus:

2.1.The appellant herein, M/s.KSM Nirman Private Limited,



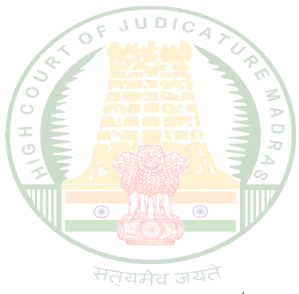
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presently known as M/s.Olympia Tech Park (Chennai) Private Limited, commenced the project in the year 2012 (16 residential towers with 744 apartments and 1 commercial tower). On 26.04.2012, the appellant has obtained the planning permit and also obtained the building plan approval from CMDA, which is the competent authority. The appellant completed the construction and obtained completion certificates in a phased manner in three phases as stated below:

- (i) For the 1st phase of 9 Blocks, the 1st Partial Completion Certificate was issued by the competent authority CMDA dated 13.05.2015;
- (ii) For the 2nd phase LIG (2 blocks), the 2nd Partial Completion certificate was issued by the competent authority CMDA dated 06.11.2015;
- (iii) For the 3rd phase of 7 blocks 3rd Partial completion Certificate was issued by the competent authority CMDA dated 15.02.2016.

The term "Partial" was used in the above Completion Certificates because the completion of the project was in a phased manner as



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contemplated in the Explanation to Sub Section 2 of Section 3 of RERA Act, read with Section 2 (q) thereof.

2.2. The apartments were handed over to the respective purchasers in a phased manner, after completion of the phases during the period from the years 2015 to 2016. The apartment purchasers created an Owners' Welfare Association in the year 2016 (Olympia Grande Owners Welfare Association)/ the respondent herein and registered it with the Registrar of Societies vide registration certificate dated 23.11.2016.

2.3. The respondent Association took control of the common area and its maintenance in June 2017 and it is now under the control and maintenance of the Association since then. As far as the 17th tower (Commercial) is concerned, a revised planning permission was obtained from CMDA and the Project Completion Certificate for the entire project was obtained on 06.12.2017.

2.4. Mr.Isacc Mohanlal, Senior Counsel, appearing on behalf of Mrs.M.V.V.N.Sivanthy, learned counsel for the appellant would contend that



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the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred as 'RERA'*) was notified with effect from 26.03.2016, and so far as the State of Tamil Nadu is concerned, it became operational from the date of framing and notification of the Tamil Nadu Real Estate (Regulation and Development Rules), 2017 with effect from 22.06.2017. As such, the main contention of the learned Senior Counsel is that the said Act and the rules which came into operation in Tamil Nadu from 22.06.2017 cannot operate in respect of the Real Estate Projects which were completed on or before the said date i.e. 22.06.2017, in as much as the projects in the present case (16 residential towers) came to be completed and handed over to the allottees on the strength of Completion Certificates dated 13.05.2015, 06.11.2015, & 15.02.2016.

2.5. According to the learned Senior Counsel, registration for the Real Estate Projects is mandatory under the Act only in respect of ongoing projects and for "future projects, and not, in respect of the projects which are already completed and received Completion Certificate as provided under Section 3 (2) and the Explanation thereto.

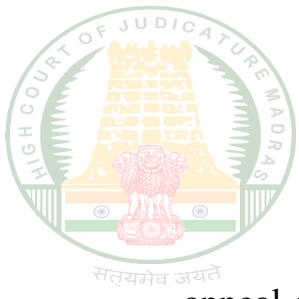


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2.6. Meanwhile, the respondent Association has filed a complaint before the Regulatory Authority, mainly for corpus fund and for certain rectifications in the project. The entire corpus fund of Rs.2,18,07,755/- drawn on HDFC Bank DD No.009329 dated 11.03.2021 was handed over to the respondent Association. While so, after three years, in the year 2019, the respondent Association has filed a complaint "FORM M' before the Tamil Nadu Regulatory Authority under section 31 of the RERA Act. The complaint was numbered as C.No.327 of 2019. The said application was objected by the appellant by way of filing preliminary objection that the complaint itself is not maintainable since the project was completed as early as in the year 2015 and partial completion certificates were obtained on 13.05.2015, 06.11.2015 and 15.02.2016 before the RERA notification. The Authority, after hearing the submissions, rightly dismissed the complaint vide order dated 06.11.2019.

2.7. Aggrieved by the said order, the respondent Association filed an appeal before the Tamil Nadu RERA Appellate Tribunal and the case was numbered as Appeal No.75 of 2019. The Appellate Authority allowed the



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appeal filed by the respondent Association, thereby setting aside the order made in C.No.327 of 2019 dated 06.11.2019 with a direction to restore C.No.327 of 2019 to file and dispose the complaint on merits within three months. Aggrieved against the same, the appellant has preferred the present Civil Miscellaneous second Appeal before this Court.

3. The main grounds raised by Mr.Isacc Mohanlal, Senior Counsel, appearing on behalf of Mrs.M.V.V.N.Sivanthy, for the appellant are as follows:-

3.1. RERA came to be published in gazette on 26.03.2016, when Section 1 came into force. Section 2, Sections 20 to 39, Sections 41 to 58, Sections 71 to 28, Sections 81 to 92 came into force on 01.05.2016, Sections 3 to 19, 40, 59 to 70, 79 and 80 came into force on 01.05.2017 and the Real Estate Act Tamil Nadu Rules 2017 came into force on 22.06.2017. In the present case, admittedly the apartments were completed and handed over to the owners by 2015 and there is no dispute. The Association did not pray for registration of the project with RERA. Further, both the Authority and Tribunal had confirmed that the project was completed much before the Act and its regulations came into force.



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3.2. According to the learned Senior Counsel, the RERA Appellate Tribunal has held that Section 71 dealt with power to adjudicate by the adjudicating officer Under Sections 12, 14, 18 and 19 of the RERA Act, and in this provision, a proviso clause was included in which, it has been specifically contemplated that, any person, whose complaint in respect of matters for compensation etc., is pending before the Consumer forum on or before the commencement of this Act, he may, with the permission of such forum, withdraw the complaint and file the same before the Adjudicating officer under this Act, Section 79 dealt with bar of Jurisdiction. Therefore, the provision contemplates that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the authority or the Adjudicating officer or the Appellate Tribunal is empowered by or under the act to determine, and emphasised that the application itself as not maintainable.

3.3. According to the learned Senior Counsel, Chapter -III, Sections 11, 12, 14, 18 and 19 of the Act, start with, the Promoter shall, upon receiving his login ID and Password under clause (a) of Sub Section (1) or



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under Sub Section (2) of Section 5, as the case may be, create his web page on the website. That being so, according to the learned senior Counsel, the Tribunal failed to consider its own finding that the project was already completed and handed over. Therefore, it is very clear that the above sections will come into play only when the project is registered and if the promoter violates any of those sections, then penal provisions will follow.

3.4. The learned senior counsel further submits that in the present case, the project was completed before the RERA Act came into force. Therefore, the apartment owners have all the rights to approach the civil court/consumer court for any grievances.

3.5. Moreover, Section 3 of the RERA Act has categorically described when the registration of the projects is required and when not required. Section 3 of the RERA Act, reads as under:

Section 3: Prior registration of real estate project with the Real Estate Regulatory Authority:

1) No promoter shall advertise, market, book, sell, offer for sale, or invite persons to purchase in any manner any



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plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority Established under this act. Provided that projects that are ongoing on the date of commencement of this act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act.

Notwithstanding anything contained in Sub-Section 1, no registration is required of the real estate project shall be required.

(b) where the promoter has received a completion certificate for a real estate project prior to the commencement of this Act.

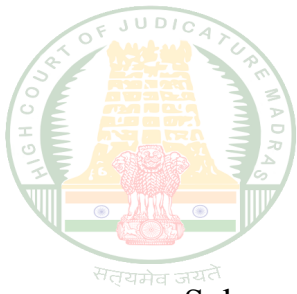
As per Section 3 (2) proviso it is very clear that the projects already completed are not required to register with RERA. The present project was completed in all aspects and a partial completion certificate was obtained before the Act came into force. Therefore the impugned order is liable to be set aside.



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3.6. Further, the learned Senior Counsel brought to the notice of this Court that at the time of admission it was fairly committed to this Court that the corpus fund collected from the individual apartment owners are kept in a Fixed Deposit and the appellant would return the corpus fund amount Rs.2,75,37,100/- to the respondent Association, and this Court recorded the same and passed an interim order dated 04.03.2021 directing the appellant to return the corpus fund. However, the appellant at a later stage found that they had spent a sum of Rs.73,80,917/- towards various purposes of the residential project from out of pocket, due to oversight, the same was not brought before the notice of this Court at the time of admission. Subsequently, the appellant has returned the undisputed Corpus fund a sum of Rs.2,18,07,755/- drawn on HDFC Bank DD No.009329 dated 11.03.2021 to the Association after retaining a sum of Rs.66,51,083/- and the same has been kept in a Fixed Deposit. Since there is a difference in the returning amount, the appellant herein filed C.M.P.No.7284 of 2021 to modify the order dated 04.03.2021. This Court has directed the Authority to hear the parties and pass final orders in C.No.327 of 2019 but to keep the final orders in a sealed cover till the disposal of this C.M.S.A.No.38 of 2021.



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Subsequently, the Authority heard the parties and passed final orders and kept the same in a sealed cover.

3.7. The appellant herein is continuously maintaining the Sewage Treatment Plant (STP) and incurring further expenditures and therefore, filed C.M.P.No.247 of 2023 to direct the Association to reimburse a sum of Rs.50,00,852/- to the appellant and further direct the respondent Association to take over the STP maintenance henceforth. Since the monthly maintenance charges were collected by the respondent Association from the individual apartment owners, the respondent Association have to maintain the STP and reimburse the amount spent by the appellant. The appellant had filed an additional typed set of papers to bring to the notice of this Court that they had totally spent a sum of Rs.1,38,35,774/- on account of STP maintenance.

3.8. The learned Senior counsel further relied upon the following judgments:-

(a) *Newtech Promoters and Developers Pvt Ltd., Vs State of*

UP and others reported in **2021 SCC Online SC 1044;**



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- (b) *ECGC Ltd vs Mokul Shriram EPC JV*, reported in 2021
SCC Online SC 1044;
- (c) *Neelkamal Relators suburban Pvt Ltd.vs.Union of India*
reported in 2017 SCC online BOM 9302;
- (d) *Macrotech Developers Ltd., vs. The State of Maharashtra*, registered as W.P.No (ST) No.1118 of 2021;
- (e) *Kusum Ignots and alloys Ltd., vs. Union of India-*
reported in (2004) 6 SCC 254;
- (f) *State of Maharashtra vs. Kalir Koil Subramaniam Ramasamy* reported in (1997) 3 SCC 525;
- (g) *Commissioner of Income Tax, Vidarbha vs Smt. Godaveri Devi Saraf*-reported in 1997 SCC Online BOM 215;
- (h) *Shiv Kumar vs Union of India*, reported in ILR 2014 KAR 2474;
- (i) *T.Rajakumari & Ors vs. Government of Tamil Nadu & others*, reported in AIR 2016 Mad 177;
- (j) *Farouk Irani vs The Deputy Collector*, reported in



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MANU/TN/2655/2017; and

(k) *Shri Ajay Kumar Gupta vs Adjudication Authority,*

registered as CrI.OP.Nos.10497 and 10500 of 2017.

4. Per contra, Mr.S.R.Rajagopal, learned Senior Counsel for Mr.Hari Radhakrishnan, appearing on behalf of the respondent Association made the following submissions:-

4.1. The appellant had completed the construction of the residential units, comprising 16 towers, by the year 2015 and partial completion certificates were obtained on 13.5.2015, 6.11.2015 and 15.2.2016, which were much before the coming into force of the provisions of RERA, 2016, whereas, the term partial completion certificate has not been provided/recognised under RERA Act. Sec.2(q) defines completion certificate.

4.2. The term partial completion certificate cannot be equated to completion certificate as defined under Sec.2(q) of the Act. Even though there is no provision either under the Development Regulations or under any

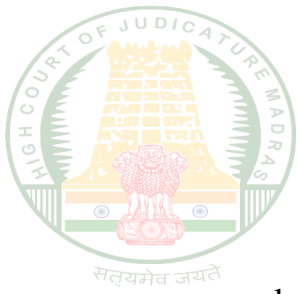


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other law for issuance of a partial completion certificate, the authorities issued partial completion certificate in respect of project where construction is in phases. When the promoter registers each phase as a project separately, then only a completion certificate would be issued and not a partial completion certificate. A partial completion certificate is issued only in respect of integrated projects, where construction is in phases, for enabling availing civic facilities and electricity.

4.3. In order to term the project as an integrated project, the project includes 17 towers consisting of A (9 Towers), B (3 Towers), C (1 Tower), D (1 Tower), E (1 Tower) and F (2 Towers) and the appellant had applied for a common planning permit for construction of all the 17 towers and accordingly, CMDA granted permission vide Permit No.7105C/PP/MSB-IT/28 A to T/2012 dated 26.04.2012 for construction of 17 residential towers. It is submitted that all the 789 owners have paid for the UDS for the total common area and has right and privilege to use the common area for the common purposes. Further, the Appellant had also obtained Environmental Clearance No.SEIAA/TN/ F-453/EC/8(a)/145/2011 dated 16.04.2013 and

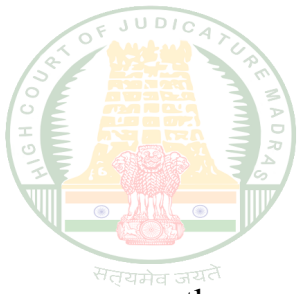


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amendment No. SEIAA/TN/ E453/KPM/8(a)/EC-145-Amdt/2011 dated 24.02.2015 for construction of 17 towers as an integrated project. Environmental Clearance (EC) to construct 744 dwelling units in 6 blocks having 17 towers and a club house. On 16.04.2013, the Environmental Clearance was also obtained for 17 towers. This is evident from the fact that the project name, for the integrated development is "Olympia Grande". There is one entry and one exit for all the 17 towers/apartments. All the 789 allottees have UDS in the total project area of 6.36 acres. Therefore, the project is an integrated project, though construction was in phases.

4.4. It is only as the construction was in phases in an integral project with one approval, for the sake of convenience, the appellant had obtained partial completion certificates on 13.05.2015, 06.11.2015 and 15.02.2016 as and when certain towers were built, so that the units in these buildings could become habitable and so that the appellant could make sales of the said dwelling units. However, these partial completion certificates do not indicate that the entire project, as approved, has been developed according to the sanction plan, layout plan and specifications as approved by



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the competent authority and further it is stated that the structural stability of the building has not been tested.

4.5. It is further submitted that the appellant had applied for a final completion certificate for the entire project only on 31.05.2017. It is submitted that in pursuance of the said application, the CMDA issued a deficiency notice dated 20.06.2017 pointing out various deficiencies. Thereafter, a final completion certificate was issued on 06.12.2017 for the entire project. Therefore, it is apparent that as on coming into force of RERA Act, 2016, final completion certificate was not even applied for.

4.6. The learned Senior Counsel further submitted that the appellant applied for a revised planning permission on 09.08.2017 to convert the usage of 17th tower from residential to restaurant cum service apartment. Therefore, it is submitted that the project developed by the appellant, construction put up in phases, would be covered under the definition of 'ongoing project' as defined in Rule 2(h) of the Tamilnadu Real Estate (Regulation and Development) Rules, 2017.



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4.7. Form A' appended to the TNRERA Rules, 2017, is the format for making an application for registration of a project under RERA Act, 2016. Paragraph (A) of the said form stipulates that, where the project is supposed to be developed in phases, an authenticated copy of the planning permission, building permit/building sanction plan and partial completion certificate for each of such phases has to be submitted for registration. Therefore, the TNRERA Rules, 2017 clearly contemplates that even where a project is developed in phases, a builder is required to register the project under RERA by enclosing copies of partial completion certificate obtained for each of such phases.

4.8. The term "ongoing project has not been so defined under the Act while the expression "Real Estate Project is defined under Section 2 (zn) of the Act, which reads as under:-

2(zn)-real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or



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building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto".

4.9. As per the legislative mandate, the Act is intended to apply even to the ongoing real estate projects. The expression "On Going Project has been defined under Rule 2(h) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 and projects, where application for completion certificate has been made after the date of coming into force of sub-section (1) of section 3 of the Act, then it would be termed to be an '*ongoing project*'. Therefore, as per the scheme of Act 2016 in particular, Section 3 says all ongoing projects that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. The legislative intent is to make the Act applicable, not only to the projects which were yet to commence after the Act became operational, but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents, while imposing certain duties and



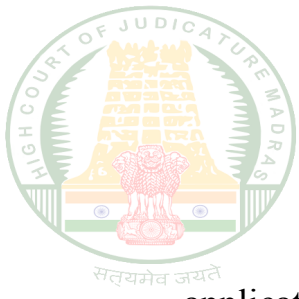
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responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector, within the fold of the real estate authority.

4.10. The learned Senior Counsel further submitted that on a harmonious reading of TNRERA Rules, 2017 and the definition of 'completion certificate' mentioned in Section 2(q) of the Real Estate (Regulation and Development) Act, 2016, it can be safely concluded that the completion certificate that is required to be obtained by a builder can only mean a final completion certificate, which is issued after ascertaining whether the entire real estate project has been completed with the required roads, amenities etc. The builder is relieved from all his obligations and liabilities only after the issuance of the final completion certificate. In the present case on hand, the final completion certificate was applied only on 31.05.2017.

4.11. The learned senior counsel for the respondent Association further submitted that the appellant had applied for a final completion certificate on 31.05.2017 for the above project and in pursuance of the said

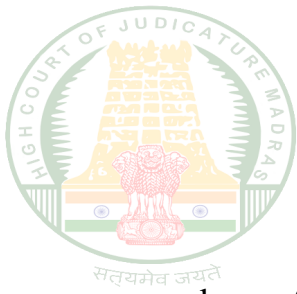


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application, CMDA had issued the Final Completion Certificate on 06.12.2017. It is submitted that RERA Act, 2016 and the TNRERA Rules, 2017 make a distinction between partial completion certificate and final completion certificate. This is evident from the fact that the application prescribed in Form 'A' for registration of the project prescribed "partial completion certificate" as one of the documents to be submitted along with the application filed for registration under Rule 3(2) of TNRERA Rules, 2017. It is submitted that Completion certificate can only be one and it has to be issued finally after CMDA is satisfied that the builder has complied with the conditions of the planning permission and has constructed the building in accordance with the permission given.

4.12. Further, it is submitted that if these so called partial completion certificates were sufficient, there would be no necessity for the appellant to apply for the completion certificate once again in December, 2017. Therefore, the Appellant, understanding and accepting the position, had thus applied for completion certificate on 31.05.2017 and thereafter applied to CMDA for revision of planning permit in August, 2017. The



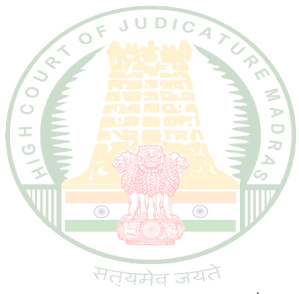
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above facts clearly establish that as on the date of coming into force of Section 3 of RERA, 2016, the appellant did not have a valid completion certificate. It is to be noted that the application for final completion certificate was submitted before obtaining plan permit and completion of project and that too, was rejected by CMDA vide their order dated 21.06.2017. This further substantiates that the project was an ongoing project' on the date of coming into force of RERA Act, 2016.

4.13. Further, it is argued that the CMDA website clearly states that the appellant had applied for a revised planning permission and the same was granted by the CMDA, vide revised planning permission No.C/PP/MSB/34(A to D)/2017 and planning permit No.11162 in letter No.C3(S)/1261/2016 dated 9.8.2017. So, it is clear that a revised planning permission was only given to the appellant on 9.8.2017. Therefore, the construction was '*ongoing*' on the date of coming into force of Section 3 of RERA, 2016.

4.14. It is further submitted that after obtaining the revised planning permission in August, 2017, the appellant continued with their

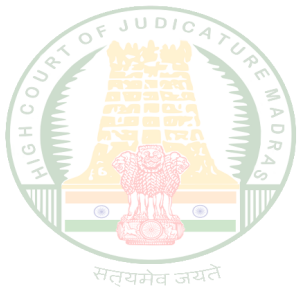


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construction. However, on 07.08.2023, CMDA issued a notice to the appellant stating that there are several defects/deviations/violations with regard to the construction put up by the appellant and disapproved the revised planning permit application submitted by the appellant on 12.09.2022. Therefore, it is apparent that obtaining of the completion certificate or even the partial completion certificate has no significance if the construction is not put up as per the approval given.

4.15. It is submitted that once it is established that the construction was completed only in December 2017, it can be safely concluded that the appellant has failed to register themselves under Section 3 of the RERA, 2016. The first proviso to Section 3(1) of RERA, 2016 states that, *'projects which are ongoing on the date of commencement of this Act and for which completion certificate has not been issued are liable to be registered within a period of three months from the date of the commence of the Act'*. In the present case, the completion certificate was issued by the appellant only on 5.12.2017. Therefore, the appellant ought to have registered themselves under Section 3(1) of RERA, 2016 within a period of three months from the date of commencement of the Act ie. within three months from 01.05.2017.

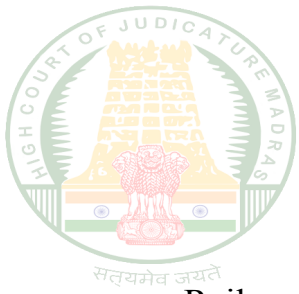


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4.16. The learned Senior Counsel also invited the attention of this

Court to Environmental Clearance Report dated 30.10.2017 issued by the Ministry of Environment, Forest and Climate Change vide F.No EP/12.1/SLAA/2017-18/13/TN/1731, which points out large number of violations committed by the appellant, which till date stands non-complied. Besides, the Tamil Nadu Pollution Control Board has called upon the appellant to pay an Environmental Compensation of Rs.7,11,60,000/- for failure to obtain consent as per the provisions of Section 25 of the Water Act, 1974 and Section 21 of the Air Act, 1981 Tamil Nadu Pollution Control Board (TNPCB), vide their proceedings dated 21.12.2020 and 12.01.2021, the Sewage Treatment Plant (STP) is not operational and is also not being maintained. This finding has been reiterated in the Inspection Report dated 14.02.2023 of the TNPCB. The Tamil Nadu Fire and Rescue Services Department has inspected the building for issuance of Fire License and issued notice dated 20.05.2020 vide K.Dis. No. 15551/C1/2019 informing several defects. Further, the Highways Department has issued a notice dated 02.03.2021 stating that the ramp contracted for entry into the apartment complex is encroaching the service road which leads to the Pallavaram



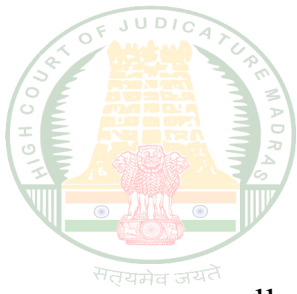
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Railway flyover and also causing hindrance to the storm water drainage.

Therefore, there are several defects/deviations/discrepancies in the construction put up by the appellant and mere possession of a "partial completion certificate" will not absolve the appellant from mandatorily registering under the provisions of RERA.

4.17. The learned Senior Counsel relied on the judgment made by the Division Bench of this High Court in the case of ***Subashini Tulasiram Vs. SPR & RG Constructions Pvt. Ltd.*** (order dated 15.09.2020 passed in CMSA No.22/2019), wherein it has been held that non-obtaining of prior environment clearance will vitiate the completion certificate obtained by the builder in the eye of law, since the said certificate cannot be considered to be complete and final. This Court further held that an environment clearance certificate is mandatory, and obtaining of post-facto clearance would not legalize the construction put up by the Builder. In the present case, the construction was put up without obtaining prior Consent to Operate and the appellant first issued with two show cause notices dated 17.12.2019 under the Water Act, 1974 and under the Air Act, 1991. Consequently, the



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appellant was imposed with a liability of Rs.7,11,60,000/- as environment compensation and the consent was finally given only on 07.12.2020, which is much after the putting up of the construction. Therefore, a post-facto approval given to the appellant would not legitimize or validate the partial completion certificates issued to the appellant in the year 2015.

4.18. Learned Senior Counsel further relied on the case of ***SARE Shelters 16 Projects Pvt. Ltd Vs. SARE Squires & Anr.*** (Order dated 16.02.2021 passed in CMSA No 27/2020) -, wherein it has been held that a completion certificate, which does not disclose whether the building was constructed as per the norms and whether the amenities were provided as per the specification cannot be considered to be valid completion certificate. In paragraph 24 of the said order, this Court held that a completion certificate issued in the year 2014, without fulfilling the requirements and conditions stipulated in the Town and Country Planning Act cannot be considered as a valid completion certificate for the purpose of grant of exclusion from registration under Section 3(ii) of RERA Act, 2016. The said decision squarely applies to the present case. The large scale deficiencies and defects noted by CMDA would establish that the project has not been completed till date.



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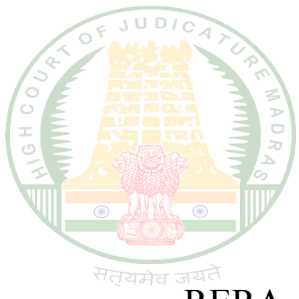
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4.19. The objects and reasons for enactment of The Real Estate (Regulation and Development) Ac, 2016 states as follows:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

Therefore, RERA Act, 2016 provision was intended to a single umbrella to address all the grievances of home buyers, irrespective of the fact whether the real estate project was or was not required to be registered in terms of Section 3 of the Act.

4.20. Therefore, it is submitted by the learned Senior Counsel for the respondent Association that the adjudicatory mechanism provided under



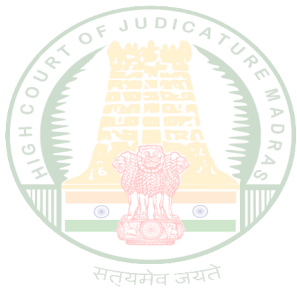
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RERA will also apply to projects, where completion certificate has been obtained prior to coming into force of the Act. In support of the above view, reliance is placed on the decision rendered by the Real Estate Appellate Tribunal, Punjab in the case of ***Silver city Construction Ltd Vs. State of Punjab*** (Order dated 24.07.2019 passed in Appeal No.49/2018] - and the decision of the Haryana Real Estate Appellate Tribunal in the case of ***Emaar MGF Land Ltd Vs. Simmi Sikka***, [Order dated 03.11.2020 passed in Appeal Nos.52 & 64 of 2018.

4.21. The learned Senior counsel appearing for the respondent Association further relied upon the following judgments:-

- (a) ***Subashini Thulasiram vs. SPR & RG Constructions Pvt. Ltd*** order dated 15.09.2020 passed by this Court in CMSA No. 22 of 2019;
- (b) ***Silver City Construction Ltd vs. State of Punjab*** order dated 24.07.2019 passed by the Real Estate Appellate Tribunal, Punjab SAS Nagar (Mohali);
- (c) ***Emaar MGF Land Ltd vs. Simmi Sikka*** dated



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03.11.2020 passed by the Haryana Real Estate Appellate Tribunal;

(d) *Lucknow Development Authority vs. Uma Shankar*

Dubey reported in 2020 (SCC) Online RERA (UP) 10;

(e) *Securities and Exchange Board of India vs. Ajay*

Agarwal reported in MANU/SC/0137/2010;

(f) *Bombay Anand Bhavan Restaurant vs. Deputy*

Director, ESI Corporation reported in

MANU/SC/1596/2009;

(g) *Bharat Singh vs. Management of New Delhi*

Tuberculosis Center, New Delhi reported in

MANU/SC/0322/1986;

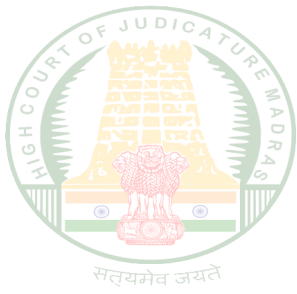
(h) *M3M India vs. Dr. Dinesh Sharma* dated 04.09.2019

passed by the High Court of Delhi in CM(M) No. 1244 of

2019 & CM Appl. 38052-38053 of 2019;

(i) *Imperia Structures Ltd vs. Anil Patni and ors.* Reported

in MANU/SC/0811/2020; and



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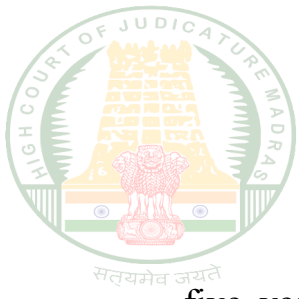
(j) *Ireo Grace Realtech Pvt. Ltd vs. Abhishek Khanna and*

ors. reported in **MANU/SC/0013/2021**;

5. Heard the learned Senior Counsel appearing for the appellant and the respondent and perused the materials placed before this Court.

6. The legislative intent behind the Act is to bring the disputes and grievances regarding the Real Estate sector under the single roof namely RERA Act. Therefore, it is not specifically provided where the RERA Act is applicable to the projects which were completed before the Act came into force or applicable only to the projects which are ongoing on the date of commencement of the Act.

7. As per Section 14(3) of RERA Act, the grievance of the buyers/allottee relating to such development, if any, is brought to the notice of the promoter, within a period of five years from the date of handing over possession, it shall be the duty of the promoter to rectify the same. In this provision, the legislature specifically mentioned the period of limitation as

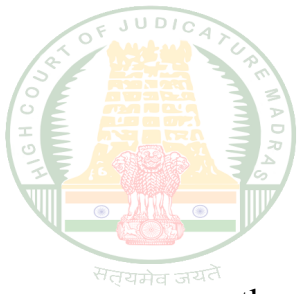


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five years. In Section 11 (4) (a) proviso clause, the responsibility of the promoter extended beyond the period of five years as contemplated in section 14(3) and shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed. So even after all the apartments were handed over and the sale deeds executed, for the structural defect or any other defect the promoter is liable and the responsibility is fixed without any limitation. The above said provisions are contemplated in this Act since it is a welfare legislation not only for the allottees but also for the promoters. Therefore, the question of maintainability does not arise and the same has been clearly addressed by the Appellate Authority by holding that the complaint raised by the respondent Association is maintainable before the Regulatory Authority since there is no other ways and means for the respondent Association to redress their grievance.

8. Section 71 proviso clause and Section 79 of the RERA Act is intended to redress the grievances of the home buyer or promoter under the provisions of the RERA Act. The respondent Association has sought relief



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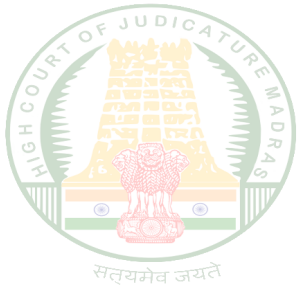
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on the basis of the duties and responsibilities of the promoter, which is contemplated under Section 11 of the RERA Act and for the said relief, the respondent Association cannot approach the Civil Court since there is a specific bar under Section 79 of the RERA Act. Without considering the above, the Regulatory Authority has rejected the claim made by the respondent Association by dismissing the complaint as not maintainable, which has been rightly answered by the Tribunal and ordered as 'maintainable', thereby allowing the appeal and setting aside the order of the Regulatory Authority in C.No.327 of 2019 dated 06.11.2019, which does not warrant the interference of this Court. Accordingly, the order passed by the Tribunal stands confirmed and the Regulatory Authority is directed to restore C.No.327 of 2019 to file and dispose of the complaint within a period of two months from the date of receipt of a copy of this judgment.

9. Accordingly, the Civil Miscellaneous Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

(J.N.B., J.) (R.K.M.J.,)

20.11.2024



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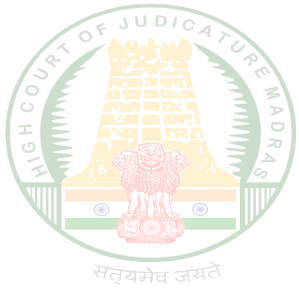
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Internet : Yes/No
Index: Yes/No
Speaking Order: Yes/No

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To:

- 1) The Tamil Nadu Real Estate Appellate Tribunal (TNREAT), Chennai
- 2) Tamil Nadu Real Estate Regulatory Authority, Chennai



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J.NISHA BANU.,J.

and

R.KALAIMATHI, J.

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Judgment made in
C.M.S.A.No.38 of 2021

Dated:
20.11.2024